

ASSEMBLY BILL

No. 2737

Introduced by Assembly Member Feuer

February 22, 2008

An act to amend Section 121060 of the Health and Safety Code, relating to communicable disease.

LEGISLATIVE COUNSEL'S DIGEST

AB 2737, as introduced, Feuer. Communicable disease: involuntary testing.

Existing law authorizes a court to order the withdrawal of blood from any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter, or emergency medical personnel for medically accepted indications of exposure to or infection by the acquired immune deficiency syndrome (AIDS) virus, AIDS-related conditions, and those communicable diseases for which medically approved testing is readily and economically available as determined by the court.

Existing law requires copies of the test results to be sent to the defendant or minor, among other specified persons. Existing law authorizes the peace officer, firefighter, emergency medical personnel or the employing agency, officer, or entity to petition the court for this order.

This bill would, instead, authorize a court to order the withdrawal of blood for the above-described purposes from any arrestee whenever the blood or other bodily fluids of this person comes into contact with the skin or membranes of a peace officer, firefighter, or emergency medical personnel while the peace officer, firefighter, or emergency medical personnel is acting within the scope of his or her duties. The bill would also authorize the petition to be filed ex parte. By expanding the duties of local officials, this bill would impose a state-mandated local program.

This bill would require the person whose sample was tested to be advised that he or she will be informed of the HIV test results only if he or she wishes to be so informed.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 121060 of the Health and Safety Code
2 is amended to read:
3 121060. (a) ~~Any person charged in any criminal complaint~~
4 ~~filed with a magistrate or court and any minor with respect to~~
5 ~~whom a petition has been filed in juvenile court, in which it is~~
6 ~~alleged in whole or in part that the defendant or minor interfered~~
7 ~~with the official duties of a peace officer, firefighter, or emergency~~
8 ~~medical personnel by biting, scratching, spitting, or transferring~~
9 ~~blood or other bodily fluids on, upon, or through the skin or~~
10 ~~membranes of a peace officer, firefighter, or emergency medical~~
11 ~~personnel shall in addition to any penalties provided by law be~~
12 ~~subject to an order of a court having jurisdiction of the complaint~~
13 ~~or petition requiring testing as provided in this chapter.~~
14 The peace officer, firefighter, or emergency medical personnel
15 ~~or the employing agency, officer, or entity who, while acting within~~
16 ~~the scope of his or her duties, comes into contact, through his or~~

1 *her skin or membranes, with an arrestee's blood or other bodily*
2 *fluids may petition, ex parte, the court for an order—authorized*
3 *under this section requiring testing as provided in this chapter.*

4 ~~The~~

5 *(b) The court shall promptly conduct a hearing upon any such*
6 *a petition filed pursuant to subdivision (a). If the court finds that*
7 *probable cause exists to believe that a possible transfer of blood,*
8 *saliva, semen, or other bodily fluid took place between the*
9 *defendant or minor arrestee and the peace officer, firefighter, or*
10 *emergency medical personnel, as specified in this section, the court*
11 *shall order that the—defendant or minor arrestee provide two*
12 *specimens of blood for testing as provided in this chapter.*

13 ~~Copies~~

14 *(d) (1) Except as provided in paragraph (2), copies of the test*
15 *results shall be sent to the—defendant or minor arrestee, each peace*
16 *officer, firefighter, and emergency medical personnel named in*
17 *the petition and his or her employing agency, officer, or entity,*
18 *and if the—defendant or minor arrestee is incarcerated or detained,*
19 *to the officer in charge and the chief medical officer of the facility*
20 *where the person is incarcerated or detained.*

21 *(2) The person whose sample was tested, shall be advised that*
22 *he or she will be informed of the HIV test results only if he or she*
23 *wishes to be so informed. If the person declines to be informed of*
24 *the HIV test results, then he or she shall sign a form documenting*
25 *that refusal. The person's refusal to sign that form shall be*
26 *construed to be a request to be informed of the HIV test results.*

27 SEC. 2. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.